



The deliberate disturbance of marine European Protected Species

Guidance for English and Welsh territorial waters and the UK offshore marine area

By

JNCC

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Introduction

Why guidance?

Amendments to the Conservation (Natural Habitats &c.) Regulations 1994 (i.e. the Habitats Regulations, HR) and the new Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (the Offshore Marine Regulations, OMR) came into force on 21 August 2007ⁱ. Both Regulations have a revised definition of disturbance and the OMR extend the offence to areas of UK jurisdiction beyond 12 nmⁱⁱ. It is now an offence (under regulation 39(1)(b) of both the HR and the OMR) to deliberately disturb wild animals of a European Protected Species (EPS, species in the Annex IV of the Habitats Directive) in such a way as to be likely significantly to affect: a) the ability of any significant group of animals of that species to survive, breed, or rear or nurture their young; or b) the local distribution or abundance of that species. In Scottish territorial waters the disturbance offence is different and the guidance in this document is not applicable.

In addition, neither the amended HR nor the OMR contain the ‘incidental result’ defence for activities that disturb EPS – a defence against the charge of deliberate disturbance was available under the HR if the disturbance occurred as an incidental result of an otherwise lawful activity and could not have reasonably been avoided. A consequence of this change is that guidance is needed for those carrying out activities in the marine environment, to help **assess the likelihood of committing a disturbance offence, how this can be avoided, and if a wildlife licence is required**. This document provides the Joint Nature Conservation Committee’s (JNCC) guidance (with input from Natural England and Countryside Council for Wales) to interpreting the law from the point of view of nature conservation.

This guidance concentrates on providing assistance with interpretation of the three main elements of the disturbance offence, for marine EPS:

- 1) what is *deliberate disturbance*;
- 2) what are *significant* effects on the ability of the species to survive, breed, or rear or nurture their young, and what is a *significant* group of animals; and
- 3) what are *significant* effects on the *local distribution or abundance* of a species.

ⁱ The Conservation (Natural Habitats, &c.) Regulations 1994 (HR) have been amended twice. Firstly, in relation to Scotland, by the Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2007 (SSI 80/2007) which came into force on 15th February 2007. The Conservation (Natural Habitats, &c) (Amendment) Regulations 2007 (SI 1843/2007), which came into force on 21st August 2007, made similar, but not identical, amendments in relation to England and Wales. The guidance in the present document concentrates on the HR as they apply in England and Wales. Refer to appendix I for context information to the disturbance offence.

ⁱⁱ Please refer to Part 1 of the OMR for a definition of offshore marine area and Part 3, regulation 33 for a clarification of the area to which the offences in part 3 apply to.

Limitations of the guidance

This guidance does not form part of the ‘law’, is not binding in nature, nor is it meant to provide a legal interpretation of the Regulations. Rather, it is the JNCC’s advice on the interpretation of regulation 39(1)(b). Those considering activities that may disturb EPS may wish to seek their own legal advice.

The guidance in this document deals only with the offence of **disturbing** a marine EPS, and it should be borne in mind that where actions may result in other offences being committed, such as the **killing, injuring** or **taking** of a marine EPS, or the damage to or destruction of breeding sites or resting places, it will necessary to consider how these offences can also be avoided and whether a wildlife licence is required.

For terrestrial EPS (includes otters) please refer to the advice from the relevant nature conservation agency.